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BOOK REVIEWS

TWO BOOKS ON INSTITUTES.

COMMENTARIES ON THE LAWS OF ENGLAND, by Sir William Blackstone, Kt.
Edited by William Carey Jones, Director of the School of Jurisprudence,
University of California. San Francisco. Bancroft Whitney Company,
1915.

AN INTRODUCTION TO ROMAN-DUTCH LAW, by R. W. Lee, B.C.L., M.A., Dean
of the Law Faculty, McGill University, Montreal, Advocate of the Su-
preme Court of South Africa, of Gray's Inn, Barrister-at-Law, and lately
Professor of Roman-Dutch Law in the University of London. Oxford:
At the Clarendon Press, 1915. pp. xxxv, 360.

The most acute foreign critic of the American method of teaching law by the use of cases, Dr. REDLICH, of Vienna, thinks that one of our most serious defects is the lack of a proper course in Institutes. In the attempt to remedy this defect the great difficulty that most of us encounter who are unwilling to return to the didactic lecture of our literary colleges, is the lack of a suitable book upon which to base an institutional course. This new issue of HAMMOND'S classical edition of BLACKSTONE'S COMMENTARIES by the Dean of the School of Jurisprudence in the University of California, seems on the whole to be the best solution of the problem.

Judge HAMMOND possessed the very uncommon equipment of a thorough training in Roman Law and he had had many years of experience as practitioner, judge and teacher of the Common Law when he published his edition of BLACKSTONE in 1890. He therefore applied to the task the critical and exegetical methods of the thoroughly trained scholar. The plates of this edition were destroyed in the San Francisco fire and Dean JONES has performed a real service in giving us this new edition. The present editor, with the assistance of his colleagues, has made valuable additions to the earlier edition in the form of notes intended to show important modern modifications or innovations on the common law, and he has added extracts from the writings of well known authorities on the history, theory and practice of the law. He has also introduced full outlines of the text and notes which may be used as a basis for review by students. The exhaustive collation of the texts of the first nine editions which was an interesting and unique feature of the HAMMOND edition has been omitted from the present edition. The other interesting feature of the HAMMOND edition, namely the citation of cases from American courts in which BLACKSTONE is quoted, has not been reproduced. It seems regrettable that a place could not be found for these citations, especially as the present editor has examined all the cases in which such citations are made, which have been decided since the HAMMOND edition was published in 1890. The critic has found these citations of considerable value, and the collation of the texts certainly appeals to the scholarly prejudice of those brought up on the classics. Dean JONES, however, suggests that for

that body of old fashioned legalists—we hope the number is still large—who want to use HAMMOND'S BLACKSTONE as the classical scholar uses his BENTLEY'S HORACE, there are still in existence enough copies of the old edition. The criticism of the present form—two rather heavy volumes in buckram instead of the old handy pocket size—may be met in the same way.

The present edition is for students who are beginning the study of law and the features of the old edition which were most suitable for their needs have been retained and the additions add materially to its value. Until the legal millenium comes when we shall know enough about our own system of law to be able to write a scientific book of Institutes, this classic edition of our classical commentaries seems the best solution of our difficult problem of getting a proper introduction to law. There does not, however, seem to be any place for it in the law-school proper and until the rest of us can get the unique form of organization of legal studies existing in the California school of jurisprudence as preliminary to the law-school proper, it would seem that the best we can do is to introduce it in the collegiate part of our combined courses.

The modest volume written for the purpose of giving the student from Anglo-Dutch dependencies a view of the general principles of Roman-Dutch Law, is the work of a ripe scholar who has had large practical experience in English and Roman-Dutch law. It is written from the original Dutch and Roman sources with elaborate citations from the cases and statutes in Roman-Dutch jurisdictions which are now a part of the British possessions. Roman-Dutch Law is defined as that combination of Germanic custom and Roman law which was received in the Netherlands, and the establishment of the Great Council at Mechlin in 1473 with jurisdiction over all the provinces of the Low Countries is taken as the date at which Modern Roman-Dutch Law begins. The book is written on the general plan of the Institutes of JUSTINIAN, with some simplifications of the classic scheme. The law of persons, of property, of obligations and of succession are given in successive books. The law of persons follows the classical model in including all of the themes usually relegated to the department of family law in the modern German treatises on institutes. The appendices to the several books give documents and discussions of great practical value, e. g., "The Form of Antenuptial Contract in South Africa," "The System of Conveyancing in British Guiana," "Precedents of Mutual Wills from South Africa," et cetera.

In pursuance of his expressed purpose of making a book for beginners in the subject the author confines himself to a simple and clear statement of fundamental principles in the text and relegates to footnotes, extensive references to the original sources, both ancient and modern. It is to be regretted that out of the fullness of his special knowledge of the subject we could not have had a more elaborate treatment of some of the themes upon which the Roman Law and the Common Law are at variance, and in regard to which the courts of mixed jurisdiction find such puzzling problems. For example, we should be very glad to have a fuller treatment of the doctrine of possession in the two systems, and the author gives only a little more than

a page to the very interesting discussion by the Roman-Dutch courts of the theory of consideration, though here as elsewhere we have complete citation of the colonial cases in which the courts discuss the principle. This is, however, hardly criticism but only an expression of a desire for more of a good thing which the plan of the work does not allow the author to gratify. It is to be hoped for the benefit of students of comparative law that we may have more of it later, though Dean LEE seems to think that there can be but little more of the doctrine of consideration in Roman-Dutch law if the decision on that subject by Lord DE VILLIER, the great Chief Justice of South Africa, should ever get before an appellate tribunal. [Cf. 14 MICH. LAW REV. 97.]

The book is an excellent example of what a work on Institutes should be and when our American legalists know enough about the Common Law to be able to write on Institutes of English Law, which, according to our foreign critic, Dr. REDLICH, is such a great desideratum, it seems likely that we shall have to follow the same classic model.

J. H. D.

GUIDE TO THE LAW AND LEGAL LITERATURE OF SPAIN. Prepared under the direction of Edwin M. Borchard, Law Librarian. By Thomas W. Palmer, Jr., of the Birmingham, Alabama, Bar, Sheldon Fellow, Harvard University, 1913-1914. Washington: Government Printing Office, 1915. pp. 174.

This is the third of the series of guides to the great collection of foreign law in the Library of Congress. A review of the "Guide to the Law and Legal Literature of Germany," appeared in a former issue of this REVIEW, Cf. Vol. x, p. 666. The author while working on the Sheldon Fellowship spent several months in the Library of Congress and a considerable time in Spain. The present work is to be used as the basis of a "Guide to the Law and Legal Literature of Latin America."

This volume is arranged on the same general plan as the preceding volumes of the series and apparently has retained the high standard of excellence of its predecessors. The chapter on legal history is a very welcome addition to our scanty literature on the subject. The glossary of Spanish legal terms will be of especial value to our lawyers who have to deal with Spanish-Americans. The volume can be procured from the Superintendent of Documents, Government Printing Office, Washington, D. C., at a price of fifty cents.

J. H. D.